

EXHIBIT 11

#412
CONFIDENTIAL

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF RHODE ISLAND

3 Case No. 1:22-cv-00090-MSM-PAS

4 THICCC BOY PRODUCTIONS, INC.,

5 Plaintiff,

6 vs.

7 KYLE SWINDELLES a/k/a YEW NEEK

8 NESS; and DOES 1 through 10,

9 Defendants.

10

11

12

13 CONDITIONALLY CONFIDENTIAL TRANSCRIPT OF
14 VIDEOTAPED DEPOSITION OF KYLE SWINDELLES

15 May 5, 2023 at 11:13 a.m.

16 Virtual Room

17

18

19

20

21 -----Jennifer A. Doherty, CSR-----
22 Certified Court Stenographer

23

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17 For the Defendant.

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1 make videos on.

2 Q. How many YouTube channels have you had?

3 A. Two.

4 Q. Didn't you have more than two -- I mean --
5 well, let me back up. In total of all the YouTube
6 channels you've had, you've only had two channels,
7 or you only have two channels currently?

8 A. I've only had two channels.

9 Q. And what were the names of those two
10 channels?

11 A. Yew Neek and Yew Neek Ness.

12 Q. Do you consider yourself unique?

13 A. Yes.

14 Q. Why is that?

15 A. The way I look, the way I talk.

16 Q. How many videos have you made?

17 A. I couldn't tell you, I have no idea.

18 Q. How many videos have you made about
19 Brendan Schaub?

20 A. Couldn't tell you, no idea.

21 Q. What is the name of your current YouTube
22 channel?

23 A. I don't have a current YouTube channel.

24 Q. You don't have a current YouTube
25 channel?

1 Q. Well, so would it surprise you that it
2 appears that the first video on Yew Neek
3 Entertainment was posted on February 20, 2022? Does
4 that sound about right?

5 (Reporter asks for clarification.)

6 A. I said I guess.

7 Q. And are you aware that your channels were
8 taken down, I believe, around February 18 or 19?

9 A. Were they? I don't remember the exact
10 date.

11 Q. Actually, that's not correct, I take it
12 back. It was -- you received takedown notices on
13 February 15 and 16, didn't you?

14 A. I don't know, but I know there was a while
15 before the notices and it was actually taken down.

16 Q. Do you have any reason to believe that you
17 did not receive takedown notices with respect to
18 your two YouTube channels on February 15 and
19 February 16?

20 A. I probably did.

21 Q. So you received takedown notices from your
22 channels on February 15 and 16, and then all of a
23 sudden on February 20 your girlfriend's channel, Yew
24 Neek Entertainment, starts posting videos? Was the
25 result -- was that a result of your channels being

1 taken down?

2 A. Yes.

3 Q. Do you know how many -- and are you the
4 one that posts the videos to these channel?

5 A. Excuse me, say that again?

6 Q. Are you the one that posts the videos to
7 Yew Neek Entertainment since February 20, 2022?

8 A. Sometimes. Sometimes she will post them
9 if I'm busy.

10 Q. Approximately what percentage of the
11 videos do you post versus your girlfriend?

12 A. I do --

13 Q. What's your girlfriend's name?

14 A. Desaree.

15 Q. Desaree what?

16 A. Raoph.

17 Q. How do you spell that?

18 A. R-A-O-P-H.

19 Q. And does Desaree -- I'm sorry, what
20 percentage of the videos posted since February 20
21 have you posted approximately?

22 A. I couldn't give you an exact percentage
23 but the vast majority.

24 Q. Vast majority. So you post the vast
25 majority of videos on Yew Neek Entertainment?

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1 A. Yes.

2 Q. Do you know how many videos you've posted
3 on this channel?

4 A. No.

5 Q. Do you know how many videos have been
6 posted on this channel?

7 A. No.

8 Q. Well, as of a couple of days ago, it was
9 about 226. Does that sound about right?

10 A. Yeah, I guess so.

11 Q. How many -- okay. What are the subjects
12 of the videos that you've posted on Yew Neek
13 Entertainment? Or let me rephrase that.

14 What is the subject of the videos that are
15 posted on this YouTube channel, Yew Neek
16 Entertainment?

17 A. A lot about Brendan Schaub, a lot about
18 Bryan Callen, a lot about Steven Crowder.

19 Q. Who are those -- who are those people?

20 A. YouTubers?

21 Q. Do they appear on Brendan Schaub's show?

22 A. Bryan Callen does.

23 Q. So is Bryan Callen a co-host with
24 Brendan?

25 A. Yes.

1 Q. And the other person you mentioned was
2 who?

3 A. Steven Crowder.

4 Q. Do you know approximately what percentage
5 of the video on your channel relate to Brendan
6 Schaub?

7 A. No.

8 Q. Would you agree that most, the vast
9 majority of the videos on Yew Neek Entertainment
10 relate to Brendan Schaub?

11 A. Yeah.

12 Q. Would you agree that eight of the top ten
13 viewed videos on this channel relate to Brendan
14 Schaub?

15 A. Probably.

16 Q. And would you agree that the No. 1 in two
17 videos that have been viewed on this channel relate
18 to Brendan Schaub and have about 300,000 views a
19 piece?

20 A. Probably.

21 Q. Why do you create so many videos about
22 Brendan Schaub?

23 A. He does a lot of dumb things in his videos
24 about...

25 Q. Well, would you agree that there are a lot

1 A. No.

2 Q. And what would you say was your average
3 monthly income from Yew Neek channel?

4 A. It changes every month, so couldn't tell
5 you.

6 Q. Approximately?

7 A. One to 2,000 maybe?

8 Q. And what were the subjects of those videos
9 on the Yew Neek channel?

10 A. Mainly Opie and Anthony, Howard Stern, Joe
11 Rogan.

12 Q. And Brendan Schaub?

13 A. From time to time on that main channel.

14 Q. All right. You had a second channel
15 called Yew Neek Ness, correct?

16 A. Yes.

17 Q. When was that -- when was that channel
18 started?

19 A. After -- I couldn't tell you, but after
20 the main channel.

21 Q. And why did you start this channel?

22 A. For livestreaming.

23 Q. Did you post videos or Yew Neek Ness?

24 A. Every great once in awhile, but mainly,
25 no. It was mainly just a livestreaming channel.

1 but mainly I just watch like my feed and whatever is
2 trending.

3 Q. How many subscribers do you have on your
4 Twitter account?

5 A. A little over a 1,000?

6 Q. And how many friends do you have on your
7 Facebook account?

8 A. Couldn't tell you.

9 Q. Going back to your unique channel. How
10 many subscribers did you have on that channel?

11 A. 25,000?

12 Q. Approximately or?

13 A. I think around there, I don't --

14 Q. All right. What about on Yew Neek Ness?

15 A. Three, I want to say?

16 Q. All right, and then what about -- how many
17 subscribe --

18 A. 3,000.

19 Q. I'm sorry?

20 A. 3,000 on the --

21 Q. 3,000, I see.

22 A. I think.

23 Q. I understand, approximately. What about
24 on Yew Neek Entertainment, how many subscribers did
25 that channel have?

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1 A. I think right -- I think -- yeah, it has
2 like 10,000 on it.

3 Q. She's never -- does she ever appear on
4 videos on the Yew Neek Entertainment channel?

5 A. No.

6 Q. Does she provide any of the material for
7 you that gets recorded on a video?

8 A. Yes.

9 Q. What type of contributions does she make
10 to the content of the videos?

11 A. She's always telling me, oh, this
12 happened, this person said this about somebody.

13 Q. So help me understand -- oh, and then, do
14 you have a Discord channel?

15 A. Yes.

16 Q. And what happens on your Discord
17 channel?

18 A. I don't know, I hardly ever go in there.

19 Q. Well, why did you set it up?

20 A. Mainly what I used to do a lot of
21 livestreaming -- a way for people to talk to me on
22 livestream. But I don't really go in there, do
23 anything in there, so...

24 Q. So you never visit your Discord channel?

25 A. Hardly ever.

1 A. Then probably around then.

2 Q. And you received the takedowns related to
3 the Yew Neek Ness channel around the same time?

4 A. No, I got no -- that channel just goes
5 away because it was associated with my main channel.

6 (Reporter asks for clarification.)

7 A. So once you lose a channel, you lose all
8 your channels.

9 Q. Are you aware that Thiccc Boy Productions
10 sent you -- or sent four takedown notices with
11 respect to four different videos on YouTube?

12 A. Yes.

13 Q. And you're aware that two of them were on
14 the Yew Neek channel and two of them were on the Yew
15 Neek Ness channel?

16 A. Perhaps.

17 Q. So there were actually videos on the Yew
18 Neek Ness channel, weren't there?

19 A. I said from time to time they will.

20 Q. So two of the videos of Brendan Schaub
21 were on the Yew Neek Ness channel, correct?

22 A. Well, I don't know because two of the
23 videos you showed me aren't the videos that they're
24 claiming. One of the videos that was claimed was
25 Brendan Schaub loses the race. I've yet to see that

1 Q. And in response to that takedown notice
2 did you also file a counter notice?

3 A. Yes.

4 Q. Have you ever received a takedown notice
5 and not filed a -- a counter notice?

6 A. No.

7 Q. So whenever you receive a takedown notice,
8 what do you do to figure out whether or not you
9 should send a counter notice?

10 A. I know all my videos are fair use. So I
11 just know to all --

12 (Reporter asks for clarification.)

13 A. I just know all my videos are fair use,
14 and I know video counter if it's being taken down
15 through copyright.

16 Q. And what do you do in order to assess
17 whether or not a video that you have created
18 constitutes fair use?

19 A. I read the rules on fair use.

20 Q. Where did you read the rules?

21 A. In the YouTube studio.

22 Q. Have you consulted anyone else on what
23 constitutes fair use?

24 A. No.

25 Q. So the sole basis of your knowledge about

1 A. Then I'll hit screen record and talk, and
2 then try like a minute of what he said and talk
3 afterwards.

4 Q. Okay. So how do you play the video in
5 order to capture it through screen record?

6 A. You just hit play at the Subreddit.

7 Q. So you push play in the Subreddit, and you
8 have a screen recorder, correct?

9 A. Yes.

10 Q. And which program is that called?

11 A. Just a generic screen recorder.

12 Q. You don't -- you don't know the name of
13 your screen recorder?

14 A. No.

15 Q. How did you get your screen recorder?

16 A. Just put screen recorder in the Play store
17 about 50 of them pop up.

18 Q. And you don't know which one you used with
19 respect to --

20 A. I don't know the exact name.

21 Q. Okay. So you hit screen record. Then
22 what happens?

23 A. It records, and then I talk, and then
24 perhaps play a minute or two, and then talk again.

25 Q. All right. So let's go back to this

1 that the letters and numbers after the equal sign is
2 the identification of the video? Do you understand
3 that?

4 A. Yes.

5 Q. Okay. And this -- it says -- it says
6 videos included in counter notification, and it has
7 a video that ends with VEE8. Do you see that?

8 A. Yes.

9 Q. So -- and then it says display name of
10 uploader, and it says Yew Neek, right?

11 A. Yes.

12 Q. And that's your channel, correct?

13 A. Yes.

14 Q. And then it has the next paragraph here.
15 I'd like you to read this paragraph.

16 A. This is a fair use. "I talked the
17 majority of the video, and this takedown was only
18 done in an attempt to get my channel deleted as the
19 video was originally just copyright claimed and now
20 is being taken down along with multiple others in an
21 attempt to delete a Black YouTube creator's channel.
22 I reacted and talked about a clip like Sam Seder
23 does to Tucker Carlson."

24 Q. Okay. Did you write this?

25 A. Yes.

1 Q. And you sent this in to YouTube?

2 A. Yes.

3 Q. And this video that was identified here
4 ending VEE8, that was one of the videos that was
5 taken down?

6 A. I would assume so.

7 Q. Well, let's go through the process.
8 YouTube sends you this takedown. It has this URL,
9 and then you responded to the takedown for the take
10 down of this video at this URL; is that right?

11 A. Yes.

12 Q. And when you -- all right. And then I
13 guess this is dated on the 18th. When you filed the
14 counter notice, this counter notice, at the time you
15 filed that did you think that this particular video
16 was removed due to a mistake?

17 (Exhibit No. 1 marked for
18 identification.)

19 A. No.

20 Q. Do you think it was removed due to a
21 misidentification of the video?

22 A. No.

23 Q. With respect to all of the counter notices
24 you filed, including the other three which we'll
25 look at shortly, you didn't think that the videos

1 removed due to a mistake, right?

2 A. No.

3 Q. And you didn't think -- and you -- did you
4 think -- let me rephrase that just because there
5 were a couple double negatives in there.

6 At the time you filed the counter notice
7 did you think that any of the videos that were taken
8 down were removed due to a mistake?

9 A. No.

10 Q. At the time you filed the counter notices
11 did you think that the videos were removed due to a
12 misidentification of the video?

13 A. No.

14 Q. All right. Okay. I'm going to go to
15 Exhibit 2. So let me stop sharing for a second, and
16 get back to this page. All right. I got Exhibit 2
17 here, so let me just -- before moving onto the -- to
18 this next exhibit, so just to be clear, after you
19 received the takedown notice and before you filed
20 the counter notice, what did you do, if anything, to
21 determine whether you should file a counter notice?

22 A. I don't know.

23 Q. Did you review the video?

24 A. Yeah.

25 Q. Did you watch it?

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1 THE VIDEOGRAPHER: All right. Off
2 record at 12:35 p.m.

3 (Recess taken.)

4 THE VIDEOGRAPHER: Back on record at
5 12:46.

6 BY MR. ALLEN:

7 Q. Okay. So, Mr. Swindelles, we're back.
8 I'm going to show you the next exhibit here.

9 (Exhibit No. 3 marked for
10 identification.)

11 Q. Do you see the document that's labeled
12 Exhibit 3?

13 A. Yes.

14 Q. And this is an email from YouTube to Bent
15 Pixels dated February 19 starting with "We received
16 the attached counter notification." I'm going to go
17 to Page 2. And says counter notification as
18 follows, videos included in the counter
19 notification, and then refers to a YouTube video
20 ending in OSS8. Do you see that?

21 A. Okay.

22 Q. And it says Yew Neek Ness as the uploader.
23 Do you see that?

24 A. Yes.

25 Q. And then could you read the next sentence

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1 Q. Why do you switch phones?

2 A. One broke. I think I lost another one.

3 Q. So when you get a new phone, you get a new
4 phone number?

5 A. Yeah.

6 Q. What's your current phone number?

7 A. I would have to look to see. I don't call
8 myself so...

9 Q. All right. So you filed a -- this counter
10 notification with respect to video ending in OSS8?

11 A. Yes.

12 Q. And because it says -- and Yew Neek Ness,
13 that's that second YouTube channel you were talking
14 about, the one that you mostly use for streaming?

15 A. Yes.

16 Q. But it appears that this video was removed
17 from this channel. So this video was on this
18 channel, correct?

19 A. Yes.

20 Q. I'm getting the next exhibit ready.

21 (Exhibit No. 4 marked for
22 identification.)

23 BY MR. ALLEN:

24 Q. All right. Do you see this Exhibit No.
25 4?

1 A. Yes.

2 Q. This is another email from YouTube to Bent
3 Pixels dated February 19. I'm going to scroll to
4 the second page. It has the counter notification
5 information. And it has a -- videos included in
6 counter notification with a video ending in WIYC.
7 Do you see that?

8 A. Yes.

9 Q. And it says display name of uploader, it
10 says Yew Neek Ness. Do you see that?

11 A. Yes.

12 Q. By the way, there's a little TM next to
13 that. Do you have your name -- is it registered
14 with the trademark office?

15 A. No.

16 Q. And where do you put Yew Neek Ness with
17 the trademark? Where do you usually use that TM
18 symbol?

19 A. Just the channel.

20 Q. All right. And then can you read this
21 first paragraph here, starting with "This was"?

22 A. "This was fair use and a reaction video.
23 This was done to try and to take my channel down. I
24 followed all the rules and gave commentary about a
25 clip that is played on other channels. They are

1 also doing this on my other channel as well."

2 Q. Okay. So did you write this?

3 A. Yes.

4 Q. And this Yew Neek Ness, that's your second
5 YouTube channel?

6 A. Yes.

7 Q. And you were filing this counter
8 notification with respect to this video ending with
9 Y -- I'm sorry, WIYC?

10 A. Yes.

11 Q. Great. This next show -- I'm going to
12 show you a -- okay. I'm going to show you this next
13 Exhibit No. 5.

14 (Exhibit No. 5 marked for
15 identification.)

16 BY MR. ALLEN:

17 Q. Do you recognize Exhibit 5?

18 A. No.

19 Q. Okay. So this is a screenshot that I took
20 of a YouTube -- the first second or so of a YouTube
21 video, Episode 729 from the YouTube channel The
22 Fighter and The Kid. Are you familiar with The
23 Fighter and The Kid?

24 A. Yes.

25 Q. What is The Fighter and The Kid?

#432

1 thing is about what I said it was about.

2 Q. Was it necessary for you to include Bryan
3 Callen's conversation about COVID in order to make
4 your point or the comment or criticize Brendan
5 Schaub trashing Howard Stern about Joe Rogan?

6 A. Yes, for context.

7 Q. For context. And what was the context?

8 A. The context for the whole argument to be
9 heard and for me to comment on it.

10 Q. What comment did you make about Bryan
11 Callen's conversation about COVID?

12 A. I agreed with them on the COVID thing and
13 about how Howard Stern is now irrelevant.

14 Q. Did you state in your commentary that you
15 were agreeing with Bryan Callen's conversation about
16 COVID?

17 A. Well, no, I didn't say that
18 specifically.

19 Q. Did you --

20 A. But I say I think Brendan Schaub is right
21 on this one. I think that's me agreeing with them.
22 So that would be --

23 Q. I'm not talking about -- I'm not talking
24 about Brendan Schaub. I'm talking about Bryan
25 Callen right now.

1 A. Oh.

2 Q. Did you comment at all about what -- what
3 Bryan Callen said?

4 A. No.

5 Q. In all of your commentary, did you ever
6 comment on the video itself?

7 A. Yes.

8 Q. And when I say the video, I mean the
9 actual video, not what was said in the video but the
10 video.

11 A. I don't know what that means.

12 Q. Well, you didn't, for instance, comment on
13 how the video was shot, right?

14 A. Why would I?

15 Q. That's not the question, sir. Did you
16 comment on how the video was shot?

17 A. No.

18 Q. Did you comment on the lighting of the
19 video?

20 A. No.

21 Q. Did you comment on the composition of the
22 video?

23 A. No.

24 Q. So the -- your commentary was solely based
25 on what Bryan (verbatim) Schaub said that was

1 captured in the video, correct?

2 A. Yeah.

3 Q. So you made no commentary on the video
4 itself, just what was in the video?

5 A. Yeah.

6 Q. So if you were to summarize, what was your
7 commentary about what Bryan (verbatim) Schaub
8 said?

9 A. I don't know who Bryan Schaub is.

10 Q. I'm sorry. Brendan Schaub.

11 A. What was the question?

12 Q. If you were to summarize, what was your
13 commentary in this video about what Brendan Schaub
14 had said?

15 A. Brendan Schaub said Howard Stern is
16 irrelevant, that all of his subscribers are fake,
17 he's a soy boy, he's completely out of touch and
18 he's wrong about COVID.

19 Q. Right. But that's what Brendan said.
20 What was commentary -- I'm sorry?

21 A. You just asked me what did Brendan Schaub
22 say.

23 Q. Yes. What was your commentary about what
24 Brendan Schaub had said in that video?

25 A. I said I agreed with him about all the

1 things he said about Howard Stern.

2 Q. Okay. And in your view it was necessary
3 for you to have almost nine minutes of The Fighter
4 and The Kid in order to talk about what Brendan had
5 said about Howard Stern and to say that you agreed
6 with him?

7 A. Yeah.

8 Q. All right. I would like to go back to --
9 I'm going to go back to Exhibit No. 1. Okay. You
10 see Exhibit No. 1 up there?

11 A. Yes.

12 Q. Okay. I would like you to read that first
13 paragraph again, starting with "this was fair use."

14 A. "This was fair use. I talked the majority
15 of the video and this takedown was only done" --
16 your mouse is in the way -- "in an attempt to get my
17 channel deleted as the video was originally just
18 copyright claimed and now is being taken down along
19 with multiple others in an attempt to delete a Black
20 YouTuber creator's channel. I reacted and talked
21 about a clip like Sam Seder does Tucker Carlson."

22 Q. So let's take the first sentence where it
23 says, "I talked the majority of the video." Do you
24 see that?

25 A. Yes.

1 Q. That wasn't true, was it?

2 A. Was this a thing for that specific video?

3 Q. Yes. Let's go -- this is VEE8, and I'm
4 going to represent to you that the video I just
5 played for you was VEE8.

6 A. Okay.

7 Q. So when it says, "I talk the majority of
8 the video," that's not true, is it?

9 A. All right. I guess not.

10 Q. And you said "The takedown was only in an
11 attempt to get my channel deleted as the video was
12 originally just copyright claimed and now is being
13 taken down along with multiple others in an attempt
14 to delete a Black YouTube creator's channel."

15 That wasn't correct either, was it?

16 A. Well, no, it was copyright claimed before
17 with all revenue going to Brendan Schaub, and then
18 later did a takedown.

19 Q. Okay. Well, is it your opinion that it's
20 accurate to say that the only reason why it was
21 taken down was to delete a Black YouTube creator's
22 channel?

23 A. Yes, that's why he did multiples all at
24 the same time, that was the goal.

25 Q. What evidence did you have at the time

1 right. I'm going to show this next Exhibit 8.

2 (Exhibit No. 8 marked for
3 identification.)

4 Q. Which is a second video which is the video
5 ending in CNAS. And I'm just going to play the
6 first part here. And that logo introduction, that
7 indicates that this is your video, correct?

8 A. Yes.

9 Q. And that you created this video,
10 correct?

11 A. Yes.

12 Q. All right. I'm going to play for a little
13 bit here.

14 (Video played.)

15 Q. Okay. I'm going to stop right here before
16 we get started. And can you see that this is a
17 screenshot I guess in your video of the earlier
18 Episode 740 that I had just shown you? I can flip
19 back to that if you'd like to see it.

20 A. Yes.

21 Q. Yes, you would like to see it, or yes, you
22 agree that this is from --

23 A. Yes, I agree.

24 Q. Okay. And how did you copy portions of
25 Episode 740 into this video?

1 A. I think that's from The Fighter and The
2 Kid Subreddit.

3 Q. Okay. And that was the same with respect
4 to the first video we saw, correct?

5 A. Possibly.

6 Q. Well, if it wasn't from the Subreddit,
7 where would you have -- where would you have gotten
8 it from?

9 A. The first one I might have actually
10 watched the podcast on that one. But usually when I
11 do these, I don't know. Am I using a screen
12 recorder in that one?

13 Q. It says something about -- something
14 screen recorder on recording desktop?

15 A. Yeah, so I probably got that one from The
16 Fighter and The Kid Subreddit.

17 (Reporter asks for clarification.)

18 A. I probably got that one from The Fighter
19 and The Kid Subreddit.

20 Q. Okay. So the first video, you probably --
21 did you use a screen recorder for the first video
22 directly from YouTube?

23 A. No. I think I just used my camera because
24 I was on my laptop.

Q. I'm sorry, can you describe the process,

1 A. No, it focused -- the webcam looks at
2 you.

3 Q. Oh, no. I -- okay. Let me go -- I
4 thought you were saying that for the first video
5 that there were different ways that you may have
6 captured the Episode 729 from The Fighter and The
7 Kid. And I think one of the ways you said was you
8 used your webcam?

9 A. Oh, I meant on me I used the webcam.

10 Q. I see. So how did you capture The Fighter
11 and The Kid episode portion for the first video that
12 we were looking at?

13 A. I might have just used the window opener
14 and then just hit record on my Streamlabs.

15 Q. So you would have played the episode on
16 your computer and then just captured that on your
17 computer as you were playing it?

18 A. Yes.

19 Q. Okay. All right. Now this -- for this
20 video, it had said something about I think it's, if
21 I just play it for a little bit more, game recorder.
22 It had said game recorder. So is that a -- is that
23 a screen recorder that you own?

24 A. That one no longer exists, but I did own
25 that one.

1 Q. Okay. And so you used game screen
2 recorder to record, this was Episode 740, of The
3 Fighter and The Kid; is that right?

4 A. Yes.

5 Q. And you created this video?

6 A. Yes.

7 Q. And did you have permission to copy
8 portions of Episode 740 into this video?

9 A. No.

10 Q. And did you have permission to copy
11 portions of Episode 729 into video one?

12 A. No.

13 Q. And this video is about two minutes and
14 ten seconds; is that right?

15 A. That's what it says.

16 Q. All right. I'm going to play the first 14
17 seconds of this video, and we'll call that segment
18 one of video two.

19 (Video played.)

20 Q. Okay. So that was the first segment.
21 What is this video about?

22 A. They make an announcement.

23 Q. Announcement about what?

24 A. Replay it again. I didn't hear the last
25 part of that one.

1 A. That video I made on my phone, not my
2 computer.

3 Q. Okay. So if you're making it on your
4 phone -- so is there any connection to what you were
5 saying to the frozen image of the video that was on
6 in your video while you were speaking?

7 A. Well, yes, I was just discussing what they
8 announced that they were having a reunion with Chris
9 D'Elia.

10 Q. But it had nothing to do with the still
11 frame of the video, does it?

12 A. I guess technically no.

13 Q. And your commentary, again, it was not --
14 you had no commentary or criticism about the video
15 itself, did you?

16 A. No, I didn't talk about the way it was
17 lighted or anything.

18 Q. You didn't comment on how the video was
19 shot?

20 A. No.

21 Q. Your commentary was solely based on what
22 Brendan Schaub said that was captured in the video;
23 is that right?

24 A. Yes.

25 Q. Now, would you say that you talked the

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1 the button. Sorry.

2 (video played.)

3 Q. Is that the intro to your videos?

4 A. Yes.

5 Q. All right. Now, I'm showing you video
6 three with an ID ending in OSS8. So I'm going to
7 play the first -- the first little bit of the video.

8 (Video played.)

9 Q. All right. I'm just going to stop it
10 there for a second. Was that you in the video?

11 A. Yes.

12 Q. So did you create this video?

13 A. Yes.

14 Q. And did you copy portions of Episode 725
15 of The Fighter and The Kid into this video?

16 A. Yes.

17 Q. And how did you -- how did you incorporate
18 Episode 725 into this video?

19 A. I believe I played it on their YouTube
20 channel, right?

21 Q. Well, I'm just looking here and I guess
22 it's not -- I can't pause it for you to see -- while
23 you can see it, but it looks as though you're in one
24 screen, and then are you using your computer to call
25 up the episode and then playing that episode while

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1 you're also on screen in a different window?

2 A. No, I'm watching it on YouTube and just
3 hitting my window capture.

4 Q. Okay. And that was directly from
5 YouTube?

6 A. Yeah, I was watching on YouTube and just
7 hit window capture so people could see what I'm
8 watching.

9 Q. All right. So I played for you the first
10 41 seconds. We'll call that segment one of video
11 three. What is this video about?

12 A. Brendan Schaub apologizing to Ariel
13 Helwani.

14 Q. And Episode 725 was posted on September 7,
15 2021. When did you post this video three?

16 A. I don't know exactly, but probably right
17 around there.

18 Q. Within a day or two?

19 A. I would assume.

20 Q. All right. So we're going to play the
21 next segment which is the longest part of this -- of
22 this video. And I'd like you to raise your hand as
23 we've done before whenever -- whenever you're going
24 to talk about or whenever there's talk about the
25 apology from Brendan Schaub to Ariel Helwani or

1 response?

2 A. Well, I did -- what I'm trying to say is I
3 did that video like, oh, here's his apology, but it
4 was really like the worst apology ever in which I
5 showed the response to the person he's talking about
6 agreeing with me that's the worst apology ever.

7 So I titled the video Brendan Schaub --
8 like I would like to see the title of that video
9 because I'm pretty sure I probably did put it in
10 quotations around the word apologizes. But
11 that's -- take it out the way I did that video.

12 Q. All right. So a couple things about that
13 is, I guess you referred and showed Ariel Helwani's
14 web page, right?

15 A. His Twitter.

16 Q. Oh, his Twitter? Sorry. His Twitter
17 account.

18 A. Yeah, that was about Twitter.

19 Q. And that was -- and Ariel Helwani would
20 have posted a video on his Twitter page, correct?

21 A. Yes.

22 Q. And you didn't play the video of Ariel
23 Helwani, you just talked about it, correct?

24 A. Yeah.

25 Q. So you were able to get across the message

1 you were making without actually having to play the
2 video, correct?

3 A. No, not really. I mean, if you never saw
4 Billy Madison, you wouldn't know the reference he
5 made. But I didn't explain it that much better
6 so...

7 Q. Well, but -- but you were talking -- and
8 didn't Ariel Helwani refer to Brendan Schaub's
9 apology as incoherent?

10 A. Yeah.

11 Q. And you and -- so you just repeated what
12 Ariel Helwani said about the apology, correct?

13 A. Yes.

14 Q. And my point is you were able to express
15 that by just showing the Twitter page without
16 actually having to play the video, correct?

17 A. Yes.

18 Q. So couldn't you have been as effective
19 with Brendan's -- Brendan Schaub's position on the
20 matter without actually having to play the video?

21 A. Well, Ariel Helwani didn't play a video in
22 his position on the matter. He wrote his position
23 on the matter and played a video making fun of
24 Brendan Schaub.

25 Q. But you didn't play the video?

1 A. No.

2 Q. So, again, looking back, did you have any
3 criticism or commentary about Episode 725?

4 A. I would say yes.

5 Q. And what was that commentary or
6 criticism?

7 A. That that was a pretty lame apology in
8 quotation mark. I don't know what word to say other
9 than --

10 Q. And you had no commentary or criticism of
11 the video itself, correct?

12 A. No.

13 Q. Your commentary was solely based on what
14 Brendan Schaub had said that was captured in the
15 video; is that right?

16 A. Yes.

17 Q. And when you -- when we were talking about
18 the Helwani's response, that it was the most
19 incoherent thing he had ever seen, what additional
20 commentary did you provide to what Ariel Helwani
21 said?

22 A. I expounded upon how I agreed with him.

23 Q. And what specifically did you say that
24 you -- that elaborated or extended or expounded upon
25 what he said?

1 Q. There are about 226 videos on that channel
2 which you mostly posted and started, correct?
3 A. I didn't start the channel, but, yeah, I
4 post on there from time to time.

5 Q. Well, didn't you say that most of the
6 videos you recorded?

7 A. Oh, yeah. Yeah, I record most of the
8 videos.

9 Q. And you appear in most of those videos,
10 correct?

11 A. Yeah.

12 Q. In fact, you probably appear in almost all
13 the videos, would that be incorrect?

14 A. Yeah.

15 Q. So -- and then going back to the Yew Neek
16 channel, how many videos approximately were on there
17 before the channel was taken down?

18 A. I have no idea. You told me the number
19 before though.

20 Q. Not for the older channels, no, I did
21 not --

22 A. I thought you did for Yew Neek.

23 Q. I'm sorry?

24 A. I thought you did for that Yew Neek
25 channel. Maybe you didn't. I don't know though.

1 Q. Was it over 100?

2 A. Yeah, it had to have been well over 100.

3 Q. Was it over 200?

4 A. I would say it would probably get into the
5 1,000 area.

6 Q. Wow, 1,000 videos. And so out of those
7 1,000 videos, how many videos did Thiccc Boy send a
8 takedown notice to you for?

9 A. I couldn't tell you exactly.

10 Q. Do you have any evidence with you today or
11 any evidence that you've produced to Thiccc Boy to
12 show that there were more than four takedowns with
13 respect to any videos on the -- and on any of your
14 YouTube channels?

15 A. No.

16 Q. And with respect to the videos on the Yew
17 Neek Entertainment channel, have you received any
18 takedown notices from Thiccc Boy Productions?

19 A. No.

20 Q. And if Brendan Schaub or Thiccc Boy wanted
21 to take your channels down, don't you think they
22 would have filed more takedown notices?

23 A. There's nothing they could do on that Yew
24 Neek Entertainment channel.

25 Q. Why is that?

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1 A. Not one video is made using any of their
2 content.

3 Q. So are you -- well, didn't you already
4 tell me that the thumb -- there were thumbnails of
5 copyrighted images of Brendan Schaub for videos on
6 that channel?

7 A. That I -- if you want to go technically
8 things that it could be -- well, no, because it's --
9 I don't -- I don't know on that new channel.
10 Because why would a thumbnail be used off of content
11 I can't use anyway? I don't know about the
12 thumbnail thing to be honest with you.

13 Q. I'm going to show -- I want to share just
14 my screen with you really quickly. I'm showing you
15 a live search or a live page on YouTube, Yew Neek
16 Entertainment. Is this your girlfriend's channel?

17 A. Yes.

18 Q. And this is the channel that -- it says
19 230 videos today. And this is the channel and you
20 post most of these videos, correct?

21 A. Yes.

22 Q. And most of these videos are about Brendan
23 Schaub?

24 A. Yes.

25 Q. All right. Do you see this one I'm

1 Q. So you created this video?

2 A. Yes.

3 Q. All right. I'm going to continue playing.

4 (Video played.)

5 Q. I'm going to stop it for a second. So you
6 incorporated portions of Episode 726 of The Fighter
7 and The Kid into this video four; is that right?

8 A. Yes.

9 Q. And how did you do that? What was the
10 process for this video compared to the other three
11 that we --

12 A. That is done from The Fighter and The Kid
13 Subreddit.

14 Q. And how do you know that?

15 A. I'm using a screen recorder on that one.

16 (Reporter asks for clarification.)

17 A. I'm using a screen recorder for that
18 video. It's a clip that's being played on a
19 Subreddit.

20 Q. Okay. So I'm going to -- and this video
21 is a minute 52. I'm going to play the first 34
22 seconds which consists of you speaking. And then
23 we'll take a -- oh, actually, I just did. That was
24 the first 34 seconds. And so this video four is
25 about Brendan Schaub responding to Ariel Helwani; is

1 it. I'm just commenting on it, and I'm doing it
2 with Schaubisms, speaking Schaubanese sometime.
3 And so I could add video, I did a little
4 Schaubanese.

5 Q. And then your commentary, what it was on
6 video four, you had no commentary or criticism on
7 the video itself, did you?

8 A. No.

9 Q. Your commentary was based solely on what
10 Brendan Schaub said and was captured in the video?

11 A. Yes.

12 Q. And to that extent, you repeated a couple
13 of things that he said, but you didn't add your own
14 criticism or commentary of that, did you?

15 A. I did basically in saying that's really
16 all you got, I thought you guys were the comedian.
17 But you let this guy who's not a comedian destroy
18 you. So I was basically talk about -- about how
19 weak their response to Ariel Helwani was.

20 Q. All right. Let me stop sharing. All
21 right. I want to turn our attention to damages for
22 a second. You received money from posting video
23 No. 1, correct?

24 A. When was video No. 1 posted?

25 Q. Well, we talked about it being posted

1 around September 20, 2021?

2 A. Then yes.

3 Q. And the money you received was in the form
4 of ad revenue; is that correct?

5 A. Yes.

6 Q. Did you receive any other money other than
7 ad revenue from video No. 1?

8 A. No.

9 Q. Did you receive any -- do you ever receive
10 any donations from people for what you do?

11 A. No.

12 Q. All right. And then you received money
13 from the posting of video No. 2, correct?

14 A. Was that around the same time?

15 Q. I believe that you said it was posted
16 around October 25, 2021.

17 A. Then yes. Well -- see, technically I
18 don't know because I would assume yes, but there's a
19 yellow badge, green badge thing on YouTube. I would
20 assume yes, though. I just can't be 100 percent
21 sure.

22 Q. And you received money from the posting of
23 video three, correct?

24 A. When was that posted, the time?

25 Q. Well, I believe that you confirmed that

1 was posted around September 7, 2021.

2 A. Then yes.

3 Q. And you received money from the posting of
4 video four which you said was posted around
5 September 8, 2021?

6 A. Then yes.

7 Q. And the money that you received was all
8 from ad revenue from Google, correct?

9 A. Yes.

10 Q. And with every -- and you get paid every
11 month; is that correct?

12 A. Once a month.

13 Q. I'm sorry?

14 A. Usually the 21st.

15 Q. Of every month?

16 A. Unless it's on the weekend, then the
17 following weekday. But, yes, the 21st of every
18 month.

19 Q. And when you get your payment, does
20 YouTube also send you a statement?

21 A. A statement?

22 Q. An accounting statement?

23 A. No, they just send the payment.

24 Q. They send the payment, and they provide on
25 your page information on how that money was

1 A. 12? Is that what that says?

2 MR. MCDERMOTT: 2212.15?

3 Q. Yeah, I see 2212. 2212.15. So the
4 2212.15, and you received this payment on 10/21. So
5 would you agree that this is the amount that Google
6 sent you for your ad revenue for your videos for the
7 month of September?

8 A. Yes.

9 Q. All right. On the next page, I see
10 there's an entry that's dated 11/22/21 from -- it
11 says direct deposit from Google for AdSense for
12 \$3,562.51. That would be -- does that represent the
13 amount of money YouTube paid you for your videos
14 during the month of October?

15 A. Yes.

16 Q. Of 2021? Turning to the next page,
17 there's an entry that's dated 12/21/21. It says
18 direct deposit from Google for AdSense in the amount
19 of \$3,132.38. Would that represent the amount of
20 money that YouTube and Google paid you for the video
21 for your ad revenue from videos that had -- that
22 played in the month of November?

23 A. Yes.

24 Q. The next page shows an entry dated
25 1/21/22. It says direct deposit from Google for

1 AdSense in the amount of \$2,172.33. Does that
2 represent the amount of money that YouTube and
3 Google paid you for ad revenue for your videos on
4 YouTube for the month of December?

5 A. Yes.

6 Q. Okay. And the next page I see there's an
7 entry dated 2/21/22. It says direct deposit from
8 Google for AdSense in the amount of \$2,095.22.
9 Would that represent the amount of money that
10 YouTube and Google paid you for ad revenue for your
11 videos for the month of January '22?

12 A. Yes.

13 Q. And then finally, we have the final
14 statement. It says credit, direct deposit from
15 Google for AdSense dated 3/21/22, in the amount of
16 \$455 and I think it's says 27 cents?

17 A. Yes.

18 Q. Does that represent the amount that
19 YouTube and Google paid you for the ad revenue of
20 your videos that were played during the month of
21 February?

22 A. Yes.

23 Q. So if I were to add up those numbers, not
24 including August, but September through February, I
25 come up with total of \$13,629.86. If I did my math

1 right, would that represent the amount of money that
2 YouTube paid to you for ad revenue for your videos
3 during the months of September '21 through February
4 '22?

5 A. Yes, if that's what it adds up to.

6 Q. And you didn't produce to us any breakdown
7 of the amount of views you got for your videos
8 during that period; is that correct?

9 A. No, I don't know.

10 Q. Do you have an idea or how many views
11 videos one got before it was taken down?

12 A. No.

13 Q. Do you know how many views video two got
14 before it was taken down?

15 A. No.

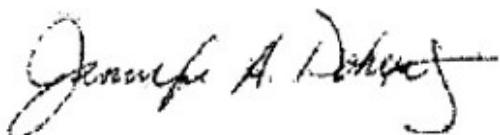
16 Q. Do you know how many views video three got
17 before it was taken down?

18 A. No.

19 Q. Do you know how many views video four got
20 before it was taken down?

21 A. No.

22 Q. All right. Mr. Swindelles, I'm showing
23 you as Exhibit No. 14 a document labeled Defendant's
24 Reply to Plaintiff's Objection to Defendant's Motion
25 for Summary Judgment. It's document 30. Do you see

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CONFIDENTIAL1 C E R T I F I C A T E
2 STATE OF RHODE ISLAND
34 I, Jennifer A. Doherty, Certified
5 Shorthand Reporter and Commissioner of Deeds duly
6 commissioned and qualified in and for the State of
7 Rhode Island hereby certify that there came before
8 me on the 5th day of May, 2023, the person
9 hereinbefore named, who was by me duly sworn to
10 testify to the truth and nothing but the truth of
11 their knowledge touching and concerning the matters
12 in controversy in this cause; that they were
13 thereupon examined upon their oath, and their
14 examination reduced to typewriting under my
15 direction and that the deposition is a true record
16 of the testimony given by the deponent.17 I further certify that I am neither
18 attorney nor counsel for, nor related to or employed
19 by, any of the parties to the action in which this
20 deposition is taken, and further that I am not a
21 relative or employee or financially interested in
22 this action.23 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY
24 HAND AND SEAL THIS 22ND DAY OF MAY, 2023.
25

Jennifer A. Doherty

Commissioner of Deeds
My Commission Expires:
February 28, 2025

1 WITNESS: Kyle Swindelles

2 DATE: May 5, 2023

3 CASE: Thicc Boy Production v Kyle Swindelles

4

5

6 DISTRIBUTION TO COUNSEL: The original signature
7 page/errata sheet was sent to Travis McDermott, Esq.
8 to obtain signature for the deponent. When signed,
9 please forward same to Robert Allen, Esq. for
10 inclusion with the original of the deposition
11 transcript.

12

13 WITNESS INSTRUCTIONS: After reading the transcript
14 of your deposition, please note any change or
15 correction and the reason for it on the errata
16 sheet. DO NOT make any notations on the transcript
17 itself. Use additional sheets if necessary.

18

19 SIGN AND DATE THE ERRATA SHEET and return it, along
20 with the transcript, to your counsel.

21

22

23

24

25

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ACKNOWLEDGEMENT OF DEPONENT

2

I, Kyle Swindelles, do hereby certify
that I have read the foregoing transcript of my
testimony taken on May 5, 2023, and further certify
that it is a true and accurate record of my
testimony, with the exception of the
changes/corrections listed below.

3

4

PAGE / LINE/ CHANGE OR CORRECTION

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Signed under the pains and penalties of perjury

16

Kyle Swindelles

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